**United Nations** **AT**

**Administrative Tribunal**

Distr.
LIMITED

AT/DEC/954
28 July 2000

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 954

Cases No. 1064: SAAF
No. 1065: SAAF

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Mayer Gabay, Vice-President, presiding; Mr. Chittharanjan Felix Amerasinghe; Mr. Kevin Haugh;

Whereas at the request of Ele Jan Saaf, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), the President of the Tribunal, with the agreement of the Respondent, successively extended to 28 February, 15 July, 31 December 1998 and 28 February 1999 the time limit for the filing of an application with the Tribunal;

Whereas, on 4 February 1999, the Applicant filed two applications. The pleas in the "first case" read as follows:

"The United Nations Administrative Tribunal is respectfully requested to:

...

3) Find that the transfer of [the Applicant] is illegal and decide, accordingly, that the challenged decision be quashed;

4) Condemn UNRWA to pay [the Applicant] a lump sum equal to two years' net base salary ... in compensation of the damages incurred by him;

5) Decide payment by the Organization of legal costs ( ...) incurred by [the Applicant] to obtain legal assistance to present his case before the said Tribunal."

Whereas the pleas in the "second case" read as follows:

"The United Nations Administrative Tribunal is respectfully requested to:

...

3) Find that the abolition of [the Applicant]'s post is fictitious, and illegal;

4) Find that the dismissal of [the Applicant] is illegal;

5) Decide accordingly that the challenged decision be withdrawn and consequently [the Applicant] be reinstated for five years or more, or that a lump sum equal to three years' net base salary ... be paid to him in compensation of the damages incurred by him;

6) Decide payment by the Organization of legal costs (...) incurred by [the Applicant] to obtain legal assistance to present his case before the said Tribunal."

Whereas the Respondent filed his answers in the "first case" and "second case" on 31 August 1999;

Whereas, on 6 December 1999, the Applicant filed written observations in the "first case" and "second case", and on 8 June 2000, the Respondent provided his comments thereon;

Whereas, on 21 June 2000, the Applicant submitted an additional document and on 20 July 2000 the Respondent commented thereon;

Whereas the facts in the cases are as follows:

The Applicant entered the service of UNRWA on 31 October 1978, on a one-year fixed-term contract at the P-5 level as an International staff member in the capacity of Deputy Director of Personnel, Vienna. His fixed-term appointment was automatically extended until 30 October 1980.

On 31 October 1980, he received an indefinite appointment, and on 28 August 1981, he was reassigned to the post of Deputy Director of UNRWA Affairs and Field Administration Officer, Jordan. On 1 May 1985, he was promoted to the D-1 level and appointed as Director of Personnel, Vienna. On 1 March 1987, he was transferred to the post of Director, UNRWA Affairs, Jordan, and on 1 September 1990 to the post of Director, UNRWA Affairs, Lebanon. On 1 July 1992, he was appointed as Co-ordinator, UNRWA Headquarters Branch, Jordan, and on 15 September 1994, he was reassigned to the post of Director, UNRWA Affairs, Jordan. Effective 1 November 1995, the Applicant was transferred to the P-5 post of Chief, Programme Planning and Evaluation Office, Jordan, retaining personal grade of D-1. On 1 October 1996, the Applicant was reassigned to the P-5 post of Senior Administration Officer, Department of Administration and Human Resources (DAHR), retaining his personal grade of D-1. He separated from service on 31 October 1997.

On 1 July 1995, UNRWA informed all Diplomatic Missions and International Organizations accredited to Jordan that, in connection with a wide ranging management review and the decision to elevate UNRWA's Amman Headquarters from a "Branch" to full Headquarters status, the Commissioner-General of UNRWA had been accredited as the Agency's Head of Mission in Jordan. The Acting Deputy Commissioner-General and Director of Health would act as Head of Mission in the Commissioner-General's absence "in all matters within the broad context of host country relations which have to date been carried out by the Director of UNRWA Affairs [the Field Director], Jordan". According to a subsequent Note Verbale to the Ministry of Foreign Affairs of Jordan, dated 12 July 1995, "Amman [would] handle all diplomatic responsibilities, contacts and activities, leaving the Agency's Field Office to concentrate on maintaining the efficiency of the Agency's operational services offered to the refugees".

On 20 July 1995, the Acting Deputy Commissioner-General wrote to the Applicant (the Director of UNRWA Affairs, Jordan), referring to a number of acts on the part of the Applicant, which, in his view, constituted a purposeful circumvention of the policy decision of the Commissioner-General to assign the Head of Mission duties to Headquarters, Amman.

In his reply of 23 July 1995, the Applicant stated that it would take some time for the new arrangements to be "absorbed", but that it was not his habit, and never had been, to intentionally circumvent instruction.

On 30 July 1995, the Acting Deputy Commissioner-General wrote to the Applicant on the same subject. He stated that if intentional circumvention was not the Applicant's habit, he must assume that his failure to respect mutually agreed instructions was at a minimum "operational neglect". He insisted that the Applicant and his staff, from the date of the letter, comply fully with the new arrangements.

On 4 September 1995, the Acting Deputy Commissioner-General wrote to the Commissioner-General, calling his attention to a "disturbing situation concerning relations between Headquarters, Amman, and the Jordan Field Office, in particular vis-à-vis the Field Director [the Director of UNRWA Affairs]", and informing him of a "series of incidents that had taken place in which the instructions were circumvented and [his] prerogatives ignored", creating serious problems for the Agency.

On 14 September 1995, the Applicant wrote to the Commissioner-General in connection with the 4 September letter, disagreeing with the Acting Deputy Commissioner-General's concerns. He stated, however, that if his presence in Jordan created a "psychological" impediment to the Acting Deputy Commissioner-General establishing himself as Head of Mission, he would welcome a transfer to another Field Office Director post.

On 18 October 1995, the Applicant again wrote to the Commissioner-General, requesting to be considered for the post of Field Office Director, Syrian Arab Republic.

In a letter dated 20 October 1995 to the Applicant, the Commissioner-General expressed dissatisfaction with the Applicant's explanations regarding the 4 September letter and informed the Applicant of his decision to transfer him to the P-5 post of Chief, Programme Planning and Evaluation Office, Jordan, retaining his D-1 level, effective 1 November 1995. The Applicant took up the post on 1 November 1995.

On 18 December 1995, the Applicant wrote to the Commissioner-General, requesting, under staff rule 111.3 (a), a review of the decision to transfer him.

The Commissioner-General replied on 8 January 1996 that he saw no reason to change his decision.

Effective 1 March 1996, the Applicant was appointed as Acting Co-ordinator of Headquarters, Jordan, in addition to his normal duties.

On 18 August 1996, the Director of Administration and Human Resources (AHR) advised the Applicant that both posts encumbered by him would be abolished effective 30 September 1996 and offered him the P-5 post of Senior Administration Officer in his Department with effect from 1 October 1996.

On 28 August 1996, the Applicant lodged an appeal with the Joint Appeals Board (JAB) in the "first case", concerning his transfer to the P-5 post of Chief, Programme Planning and Evaluation Office.

By letter of 25 September 1996, the Applicant accepted the post of Senior Administration Officer offered by the Director, AHR, on 18 August, at his personal grade of D-1. Effective 6 October 1996, the Applicant also assumed the functions of Officer-in-Charge, Recruitment and Staff Development Division, as the Chief, Mr. Bertil Landstrom (who was also the Deputy Director, AHR), had been loaned to Gaza as Assistant Director for the European Gaza Hospital.

On 6 December 1996, another staff member, Mr. David Mitchels, was also appointed to the post of Senior Administration Officer encumbered by the Applicant.

On 22 June 1997, the Director of UNRWA Operations, Gaza, informed the Commissioner-General that DAHR, as part of an overall 15 per cent reduction of international staff to be completed by the end of 1997 had decided to abolish the post of Senior Administration Officer. He proposed that Mr. Mitchels be transferred to his still vacant P-4 post of Field Legal Officer, Gaza, and that he also be appointed as Assistant Director, European Gaza Hospital, allowing Mr. Landstrom to return to his former position of Deputy Director, AHR and Chief, Recruitment and Staff Development Division.

On 30 July 1997, the Officer-in-Charge, DAHR, advised the Applicant that Mr. Landstrom would be returning to his post in DAHR and that the post of Senior Administration Officer was being "disestablished as of 31 August 1997". He further informed the Applicant that, since the Commissioner-General was not willing to give him another posting as Field Director, and since no other suitable post had been identified for him, he would be redundant on 31 August 1997. Thereafter the Applicant would be placed on special leave with full pay until 31 October 1997, when he would be separated from the Agency.

The JAB submitted its report in the "first case" on 30 July 1997. Its findings, conclusions and recommendations read as follows:

"*THE FINDINGS OF THE JOINT APPEALS BOARD*

...

12. The receivability of the appeal was considered on 23 October 1996 by the predecessor to the present Board, which *unanimously determined that exceptional circumstances of sufficient weight* [existed] *to enable the Board to waive the time limits and to declare the appeal ... receivable.*

13. In doing so, the Board exercised its powers under International staff rule 111.3 para. (d), which states that the Board *may waive the time limits in exceptional circumstances.* International staff rule 111.1 para. (c) provides that *where its competence is in doubt, the Joint Appeals Board itself shall decide.*

...

*CONCLUSIONS*

1. The Board finds that the administrative action taken against the Appellant was essentially a sanction for unsatisfactory performance.

2. The Board finds no evidence that the decision of the Commissioner-General to transfer the Appellant was motivated by prejudice or extraneous factors ...

3. The Board finds that UNRWA procedures governing performance evaluation were not consistently followed for any staff at the D1/D2 level.

*RECOMMENDATIONS*

1. The Board does not recommend the reinstatement of the Appellant to a Director post.

2. The Board recommends that compensation be awarded to the Appellant for the distress and anxiety he suffered as a result of the management of circumstances leading to and consequent on the Commissioner-General's decision of 20 October 1995, and of the delay in hearing the appeal.

3. The Board recommends that a formal system of performance appraisal be applied to staff at the level of D1/D2.

4. The Board strongly recommends that the procedures for the International Staff Joint Appeals Board be revised to include a time limit to the Administration's reply, of three months from the date of submission of the appeal. "

On 11 August 1997, the Applicant requested the Commissioner-General to review the decision to declare him redundant (the "second case").

On 19 August 1997, the Commissioner-General transmitted a copy of the JAB report of 30 July 1997 to the Applicant and informed him as follows:

" ...

On the issue of receivability, I accept the Board's recommendation that exceptional circumstances existed which justified your non-adherence to the time-limits in the Rules for filing your appeal.

On the merits, the Board termed your transfer as a 'sanction for unsatisfactory performance'. As it found that there was no evidence of the transfer being motivated by 'prejudice or extraneous factors', I understand the Board to have concluded that the transfer was an appropriate exercise of an administrative discretion and not a disciplinary measure. On that basis, I accept the Board's recommendation that you not be reinstated into a Director post.

The Board also made recommendations that you be paid compensation. It is unclear as to how the 'management of the circumstances leading to and consequent on' your transfer was not correct. The Board does not identify any procedural flaw in the transfer and there appears to be no basis upon which the Agency is obliged, legally or morally, to compensate you.

The Board also recommended that compensation be paid to you in relation to the delay in hearing the appeal. I presume that the Board intends thereby to criticise the Administration's delay in filing its reply. The reasons for this delay are numerous, the most important being the work associated with dealing with the large backlog of appeals by Area staff. Throughout, however, you did not complain about the delay nor have you alleged any 'distress and anxiety' as a result; indeed the Board has simply assumed that you may have suffered this. The recommendation of the Board appears more in the nature of a criticism on its own initiative of the Administration. Further, the Administration's delay, based on operational requirements, is similar in length to your conscious delay prior

to filing your appeal. If the Board accepts your circumstances as understandable, it is contradictory that it regards the Administration's delay as requiring compensation. I therefore reject both of the Board's recommendations regarding compensation."

On 19 October 1997, the Commissioner-General informed the Applicant that the decision to declare him redundant stood.

On 14 November 1997, the Applicant lodged an appeal with the JAB in the "second case", concerning the decision to declare him redundant. The JAB submitted its report in the "second case" on 5 October 1998. Its findings, conclusion and recommendations read, in part, as follows:

"***FINDINGS OF THE BOARD***

13. ...

(d) The Board also considered the circumstances in which the post of Senior Administration Officer was abolished at the end of August 1997, in the context of the Commissioner-General's decision to reduce international posts by 15 per cent. ...

(e) ... the Board questions the timing of the abolition of the post. ... The post was ... due to expire at the end of December 1997. From its interviews with responsible officials and review of related documents, the Board was unable to ascertain why the date had to be brought forward to the end of August.

...

(i) The Board considers ... that the timing of the termination of the appointment of the Appellant to the post of Senior Administration Officer, ahead of the Commissioner-General's decision in August 1997 to abolish that post and ahead of the projected date of 31 December 1997 for the expiry of the post's current term, was tainted with misuse of authority.

...

15. ...

(c) The Board did consider, however, that injury had been caused to the Appellant in the abrupt timing of his termination, in advance of the Commissioner-

General's decision to delete the post of Senior Administration Officer and to remove him from pay status two months ahead of the date on which that post was anyway due to expire. The available evidence did not persuade the Board that this was done for reasonable motives.

...

*Conclusion*

16. The Board concludes that the Appellant failed to show cause as to why the abolition of his post should be declared 'fictitious' and 'illegal'; or why his dismissal should be declared 'illegal'; or why either decision should be withdrawn.

17. Accordingly, the Board does not support the Appellant's claim for reinstatement or compensation equivalent to four years' remuneration.

18. The Board does consider, however, that some compensation is due to the Appellant for the injury caused him in the timing and manner of his termination.

19. The Board notes that external legal assistance to the Appellant is not provided for in UNRWA's Rules and Regulations and that there is therefore no entitlement to reimbursement of legal costs.

*Recommendations*

20. The Board recommends that the appeal be dismissed. However, since the Board has concluded that the timing of the Appellant's termination of appointment was tainted with misuse of authority, the Board recommends payment to the Appellant of an amount equivalent to the total additional emoluments to which he would have been entitled had he been retained in service until 31 December 1997."

On 19 November 1998, the Commissioner-General transmitted a copy of the JAB report of 5 October 1998 to the Applicant and informed him as follows:

"...

I have accepted the Board's primary conclusions and recommendation regarding your appeal, namely that your pleas seeking reinstatement or substantial compensation on the basis that the termination of your services was 'illegal', be dismissed. I have also accepted the Board's recommendation regarding your legal costs.

I consider, however, that the Board's reasoning leading to its characterization of the termination of your services as being '*tainted with misuse of authority*' is erroneous. This is best illustrated by an extract from the Board's report where, in considering the timing of the abolition of your post and the notification to you, the Board stated that the '*available evidence did not persuade the Board that this was done for "reasonable motives*"'. The Board has misapprehended the burden of proof in an appeal – an administrative action is presumed to be correct unless the staff member shows to the contrary. Instead, the Board concluded that there was some error in the administrative process because they believed that the Administration had not shown unambiguously that such a defect did not exist.

However, in view of the pending expiry of your post on 31 December 1997, on reflection it might have been more appropriate to retain your services until that date, instead of terminating your appointment two months beforehand. This would have been more consistent with the plans to reduce the number of International staff posts by attrition. Thus, although I disagree with the reasoning adopted by the Joint Appeals Board, I have accepted its recommendation regarding payment of an additional two months' salary to you. ..."

On 4 February 1999, the Applicant filed with the Tribunal the applications referred to earlier.

Whereas the Applicant's principal contentions in the "first case" are:

1. The decision to transfer him to the post of Chief, Programme Planning and Evaluation Office, was a misuse of authority. The transfer was in reality a disguised disciplinary measure and violated his rights.

2. The decision to transfer him was based on prejudice and improper motivation.

Whereas the Respondent's principal contentions in the "first case" are:

1. The decision to transfer the Applicant was a proper exercise of administrative discretion and not a disciplinary measure.

2. The Applicant has failed to show that the decision was vitiated by prejudice or improper motive.

Whereas the Applicant's principal contentions in the "second case" are:

1. The decision to separate him from service by reason of redundancy was illegal as it was a misuse of authority. The "abolition of his post [was] fictitious" and was designed "only to get rid of him".

2. The Respondent "failed to comply with his obligation ... to make every possible effort to re-assign" him to another post.

3. The Respondent failed to respect the Applicant's good name and dignity, thereby causing him unnecessary and undue injury.

Whereas the Respondent's principal contentions in the "second case" are:

1. The Respondent's decision to separate the Applicant from service was an appropriate exercise of managerial discretion. The Applicant has failed to meet his burden of proving that the decision was tainted by prejudice or improper motivation.

2. Taking into account the Applicant's record of unsatisfactory performance, the Respondent made all reasonable efforts to find a suitable post for him in light of his abilities and performance.

3. In the circumstances and on the basis of the facts and considerations taken the Applicant has been treated fairly and sympathetically.

The Tribunal, having deliberated from 7 to 28 July 2000, now pronounces the following judgement:

I. The Applicant has filed two applications concerning two different alleged wrongs arising from two different administrative decisions sufficiently related to each other to be considered jointly. The Tribunal will therefore deal with them both in the same judgement.

II. In his first application, the Applicant challenges the decision to transfer him with salary protection from the post of Director, UNRWA Affairs, Jordan, which was graded D-1, to the P-5 post of Chief, Programme Planning and Evaluation Office, Jordan. The record shows that there

had been no doubt on the part of the Administration about the satisfactory nature of the Applicant's performance until the latter half of 1995. The problems arose from a reorganization of the Jordan office of UNRWA that took place in mid-1995.

III. On 1 July 1995, UNRWA informed all diplomatic missions and international organizations accredited to Jordan that, in connection with a wide ranging management review and the decision to elevate UNRWA's Amman, Jordan, Headquarters from a "Branch" to full Headquarters status, the Commissioner-General of UNRWA had been accredited as the Agency's Head of Mission in Jordan. The Acting Deputy Commissioner-General would act as Head of Mission in the Commissioner-General's absence "in all matters within the broad context of host country relations which have to date been carried out by the Director of UNRWA Affairs [the Field Director] - Jordan". The Director of UNRWA Affairs was the Applicant. According to a subsequent Note Verbale to the Ministry of Foreign Affairs of Jordan, dated 12 July 1995, "Amman [would] handle all diplomatic responsibilities, contacts and activities, leaving the Agency's Field Office to concentrate on maintaining the efficiency of the Agency's operational services offered to the refugees".

IV. On 4 September 1995, the Acting Deputy Commissioner-General rote to the Commissioner-General, calling his attention to a "disturbing situation concerning relations between Headquarters Amman and the Jordan Field Office, in particular vis-à-vis the Field Director", and informing him of a "series of incidents that had taken place in which the instructions were circumvented and [his] prerogatives ignored", creating serious problems for the Agency. This letter was sent to the Applicant for comment. There had already been an exchange of letters on the problems between the Acting Deputy Commissioner-General and the Applicant. On 14 September 1995, the Applicant wrote to the Commissioner-General in connection with the 4 September letter, disagreeing with the Acting Deputy Commissioner-

General's concerns. However, if his presence in Jordan created a "psychological" impediment to the Acting Deputy Commissioner-General establishing himself as Head of Mission, he stated that he would welcome a transfer to another Field Office Director post. On 18 October 1995, the Applicant again wrote to the Commissioner-General, requesting to be considered for the post of Field Office Director, Syrian Arab Republic.

V. In a letter dated 20 October 1995 to the Applicant, the Commissioner-General expressed dissatisfaction with the Applicant's explanations regarding the 4 September letter and informed the Applicant of his decision to transfer him to the P-5 post of Chief, Programme Planning and Evaluation Office, Jordan, retaining his D-1 level, effective 1 November 1995. It is this decision to transfer him that the Applicant challenges.

VI. Subsequently, the JAB, while not recommending reinstatement, recommended that compensation be paid for distress and anxiety suffered by the Applicant in connection with the transfer and the delay in hearing the appeal. The Commissioner-General rejected the recommendation to pay compensation.

VII. The Applicant claims that there was an abuse of authority and a failure to respect his good name and dignity, causing him unnecessary harm and undue injury. He also claims that the transfer was a disguised disciplinary measure.

VIII. The issues in this application are:

(i) Was there an abuse of discretion in the decision to transfer the Applicant?

(ii) Was the transfer a disguised disciplinary sanction?

IX. On the first issue, the established law is that, while the Administration has a discretion to transfer (cf. Judgements No. 167, *Fernandez Rodriguez* (1973) and No. 189, *Ho* (1974)), the discretion must not be abused. The discretion to transfer may have been abused, *inter alia*, if an

appropriate procedure was not followed, or the decision was implemented in an arbitrary manner which resulted, for example, in injury to the good name and dignity of the staff member, or undue harm and injury was caused to the staff member.

The Administration did not deny the Applicant due process. The Applicant was given ample notice of dissatisfaction with his recent performance and he had an opportunity to comment. The decision to transfer was taken by the Administration with full knowledge of the Applicant's views both on the standard of his performance and the position to which he would like to be transferred. The staff member's interests, in regard to transfer, were properly considered. Beyond that the staff member has no right as such to have his interests honoured (cf. Judgement No. 241, *Fürst* (1979)). By the same token, no convincing evidence has been adduced that the Applicant was treated in a manner that was insulting, undignified or damaging to his reputation or that undue harm and injury had been caused him.

The Tribunal holds, therefore, that the Administration did not abuse its discretion by any procedurally irregular conduct or conduct that was in any other way arbitrary. Furthermore, in the view of the Tribunal, the Administration did not commit a substantive error in coming to the conclusion that a transfer was necessary, principally because the Applicant's performance had not been up to standard.

X. On the second issue, the Tribunal finds no evidence for concluding that there was a *détournement de procédure* because the transfer was a disguised disciplinary sanction. The Tribunal established in a very early case that "[a]lthough the Administration may not substitute one ground for another as a basis for administrative action, where there are several grounds available to it, it is not obligatory on its part to rely on all such grounds; it may choose to rely on one or more of them." (Cf. Judgements No. 157, *Nelson* (1972), para. IV, and No. 386, *Cooper* (1987), para. VII). However, there is little evidence that this was the situation in the present case. There does not seem to be any evidence of misconduct deserving discipline. At all times the issue was regarded as unsatisfactory performance, which was to be dealt with in the view of the Administration by transfer. The Applicant agreed that transfer was a legitimate option.

Administrative action was being taken for sub-standard performance. At no time was there an issue of misconduct. The Tribunal concludes, therefore, that there was no *détournement de procédure*, as alleged by the Applicant.

XI. Accordingly, the Tribunal rejects the first application.

XII. The second application concerns the termination of the Applicant's services on the ground of redundancy.

XIII. On 30 July 1997, the Officer-in-Charge, DAHR, advised the Applicant that Mr. Landstrom would be returning to his post (Chief, Recruitment and Staff Development Division) and that the post of Senior Administration Officer was being "disestablished as of 31 August 1997". He further informed the Applicant that, since the Commissioner-General was not willing to give him another posting as Field Director, and since no other suitable post had been identified for him, he would be redundant on 31 August 1997. Thereafter the Applicant would be placed on special leave with full pay until 31 October 1997, when he would be separated from the Agency.

XIV. On 11 August 1997, the Applicant requested the Commissioner-General to review the decision to declare him redundant. The Commissioner-General informed him on 19 October 1997 that the decision stood.

XV. The Applicant appealed to the JAB on 14 November 1997. The JAB submitted its report on 5 October 1998. The JAB recommended that the appeal be dismissed. However, since the JAB concluded that the "timing of the termination of the Applicant's appointment was tainted with misuse of authority", it recommended that he be paid an "amount equivalent to the total emoluments to which he would have been entitled had he been retained in service until 31 December 1997." On 19 November 1998, the Commissioner-General informed the Applicant

that, although he disagreed with the reasoning of the JAB, it might have been more appropriate to retain his services until 31 December 1997, and therefore he accepted the recommendation to pay him "an additional two months salary".

XVI. The issues in this application are:

(i) Whether the abolition of post was real;

(ii) Whether adequate efforts were made to reassign the Applicant to another post; and

(iii) Whether the procedure followed was improper or caused moral injury.

XVII. On the first issue, the Tribunal has in the past reviewed the genuineness of the abolition of posts and has held, for example, that a change in the field of activity of the organization such as to bring about the complete elimination of a previous activity could, because of the nature of a particular assignment, justify the abolition of a post (Judgements No. 2, *Aubert and 14 others* (1950) and No. 172, *Quémerais* (1973)). The decision to abolish a post is a discretionary one and is subject to review like any other discretionary power. The question raised here is whether there was a *détournement de pouvoir*, the real reason for the abolition of his post "to get rid of the Applicant", rather than an organizational need to suppress his post. Was there an improper motive behind the abolition of post? The record shows that DAHR, which was responsible in June 1997 for formulating a plan of action to reduce international staff in order to deal with UNRWA's precarious and serious financial position, decided to abolish the Applicant's post as from 31 August 1997. There was, indeed, an intention to reduce posts by attrition. Although not in agreement with the JAB's reasoning, the Agency decided to pay the Applicant an additional two months salary, as if his post had been abolished as of December 1997. In any event the Applicant would have become redundant in December 1997, upon completion of the reduction exercise. There is no indication that the abolition of the Applicant's post was improperly motivated. It could not be described as fictitious. Further, in view of the fact that the Agency decided ultimately to pay the Applicant if he had become redundant in December rather than in

August, it is academic to answer the question whether the abolition of post in August rather than in December was improper. According to the record, in any case, the decision to abolish the post in August was based on good reasons.

XVIII. On the second issue, it is the established jurisprudence of the Tribunal that upon a post being declared redundant or abolished, the Organization must make every good faith effort to find the incumbent alternative employment (cf. Judgements No. 85, *Carson* (1962); No. 447, *Abbas* (1989); No. 679, *Fagan* (1994) and No. 910, *Soares* (1998)).

As the JAB acknowledged, the Respondent made considerable efforts to find the Applicant a suitable post. The Tribunal finds no evidence in the record that this was not the case. In fact, the Tribunal notes that when the Applicant's post was abolished in 1996, the Agency found an alternate post for him.

As the Respondent points out, all directors' posts in UNRWA carry with them major responsibilities. Thus, a director must have the full confidence of the Commissioner-General.

Since the Applicant had a recent record of poor performance at the director level, the Commissioner-General did not wish to consider the Applicant for a vacant post at that level. Furthermore, at the time the Applicant became redundant he was not considered for the vacant Deputy Director posts in Gaza and Jordan Fields, because these might also be deleted, and, more importantly, because it was thought that it would not be in the Agency's interest to have him serve as a Deputy to a Director, "standing in for him or her when required and providing necessary support and advice". In addition, on 30 July 1997, the Agency confirmed to the Applicant that "a review of the P-5 posts which are vacant or likely to become vacant in the immediate future has not identified one suitable for your qualifications and in which the Agency believes you would be able to perform in the best interest of UNRWA". There is no reason to believe that this was not the case.

XIX. The third issue concerns the procedure followed. Was it an abuse of discretion to abolish the Applicant's post and declare him redundant? Was the manner in which this was done without respect for his good name and dignity and did it avoid causing him unnecessary and

undue injury? It is a recognized general principle of law that procedural irregularity in the abolition of post is impermissible, and could result on a claim of moral injury, such as the Applicant's. The Tribunal is satisfied that with regard to the two previous issues there was no wrong committed against the Applicant. There was neither a fictitious abolition of post nor a failure to make good faith efforts to find him an alternative post. Hence, the claim that there was moral injury cannot stand unless there was some other respect in which the Respondent abused its discretion to abolish the Applicant's post and declare him redundant. The Applicant has not adduced any evidence that there was such an abuse of discretion. Thus, the claim based on moral injury must fail.

XX. Accordingly, the Tribunal rejects the second application.

XXI. For the foregoing reasons, both applications are rejected in their entirety.

(Signatures)

Mayer GABAY
Vice-President, presiding

Chittharanjan Felix AMERASINGHE
Member

Kevin HAUGH
Member

Geneva, 28 July 2000

Maritza STRUYVENBERG
Executive Secretary